

Petition for Writ of Mandamus Denied and Opinion filed January 13, 2017.



In The

Fourteenth Court of Appeals

NO. 14-16-00966-CV

IN RE JAMES CONSTRUCTION GROUP, LLC, Relator

**ORIGINAL PROCEEDING
WRIT OF MANDAMUS
334th District Court
Harris County, Texas
Trial Court Cause No. 2014-72717**

MEMORANDUM OPINION

On December 2, 2016, relator James Construction Group, LLC filed a petition for writ of mandamus in this court. *See* Tex. Gov't Code Ann. § 22.221 (West 2004); *see also* Tex. R. App. P. 52. In the petition, relator asks this court to compel the presiding judge of the 334th District Court of Harris County, to vacate the part of the November 15, 2016 Amended Order On James' Motion to Compel

that determined that documents 1-12, 15, 26, 31, 32, 34, 37, 42, and 43 identified in Plaintiffs' Second Amended Mediation Privilege Log are protected from disclosure by section 154.073(a) of the Texas Civil Practice and Remedies Code.

On December 16, 2016, the real parties-in-interest Westlake Corporation and Westlake Vinyls Company, L.P. filed an unopposed motion to submit these documents under seal to our court for *in camera* review. We grant this motion.

On January 4, 2017, relator filed an opposed motion to abate this mandamus proceeding under Rule 7.2(b) of the Texas Rules of Appellate Procedure, which provides, "If the case is an original proceeding under Rule 52, the court must abate the proceeding to allow the successor to reconsider the original party's decision." Tex. R. App. P. 7.2(b). Judge Steven Kirkland succeeded Judge Grant Dorfman as the presiding judge of the 334th District Court on January 1, 2017. "However, if mandamus relief is not appropriate in this case due to the availability of an adequate remedy by appeal, there is no threat that the successor judge will be subject to mandamus based on an order made by [the] predecessor. When there is no possibility that mandamus relief will be granted, the purpose of rule 7.2(b) is not served by requiring the successor judge to reconsider the predecessor's ruling." *In re Pfiffner*, No. 05-15-01208-CV, 2015 WL 5783806, at *1 (Tex. App.—Dallas Oct. 5, 2015, orig. proceeding) (mem. op.).

To obtain mandamus relief, a relator must show, among other things, that the relator has no adequate remedy by appeal. *In re Prudential Ins. Co.*, 148 S.W.3d 124, 135–36 (Tex. 2004) (orig. proceeding). Relator has not made this showing

and so has not established that it is entitled to mandamus relief. We therefore deny relator's petition for writ of mandamus.

We also deny relator's motion to abate.

PER CURIAM

Panel consists of Chief Justice Frost and Justices Brown and Jewell.